

### **292.310 Definitions for chapter.**

When used in this chapter, unless the context otherwise requires:

- (1) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities, except as otherwise provided in this chapter.
  - (a) "Agent" does not include an individual who represents:
    1. An issuer in:
      - a. Effecting a transaction in a security exempted by subsection (1), (2), (3), (10), or (11) of KRS 292.400, or subsection (5), (9), or (12) thereof if no commission or other remuneration is received for the sale of such securities or effecting a transaction in a security exempted by KRS 292.400(15) even if commission or other remuneration is received for the sale of such security provided that the individual offers or sells no other security except securities exempted by KRS 292.400(15);
      - b. Effecting transactions exempted by KRS 292.410 unless otherwise required;
      - c. Effecting transactions in a covered security under Section 18(b)(3) or 18(b)(4)(d) of the Securities Act of 1933 if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in Kentucky;
      - d. Effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or
      - e. Effecting other transactions if the individual primarily performs, or is intended primarily to perform upon completion of an offering of the issuer's own securities, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in the issuer's own securities and the individual's compensation is not based, in whole or in part, upon the amount of purchases or sales of the issuer's own securities effected for the issuer; or
    2. A broker-dealer in effecting transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934.
  - (b) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions is an "agent" only if he otherwise comes within the definition in this subsection;
- (2) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:
  - (a) An agent, issuer, bank, savings institution, or trust company;
  - (b) A person that effects transactions in this state exclusively in securities exempted by KRS 292.400(15); or
  - (c) A person who has no place of business in this state;

1. If he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or
  2. If during any period of twelve (12) consecutive months he does not direct more than fifteen (15) offers to sell or to buy into this state in any manner to persons other than those specified in this paragraph;
- (3) "Certified" means, when used in regard to financial statements, examined and reported upon in accordance with generally accepted auditing standards with an opinion expressed by a certified public accountant;
  - (4) "Executive director" means the executive director of the Office of Financial Institutions or any individual employee of the Office of Financial Institutions expressly designated by order of the executive director to act in the executive director's place;
  - (5) "Covered advisor" means any person who is registered under Section 203 of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-3;
  - (6) "Covered security" means any security that is a covered security under Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated thereunder;
  - (7) "Office" means the Office of Financial Institutions of the Commonwealth of Kentucky;
  - (8) "Fraud," "deceit," and "defraud" are not limited to common-law deceit;
  - (9) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends;
  - (10) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:
    - (a) A bank, savings institution, or trust company;
    - (b) A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;
    - (c) A broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them;
    - (d) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
    - (e) A person whose advice, analyses, or reports relate only to securities exempted by KRS 292.400(1);
    - (f) A person who has no place of business in this state if:
      1. His only clients in this state are other investment advisers, covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

2. During any period of twelve (12) consecutive months he does not have more than five (5) clients other than those specified in subparagraph 1;
  - (g) An investment adviser representative or a person excluded from the definition of investment adviser representative;
  - (h) A person who is excluded from the definition of investment adviser under Section 202(a)(11) of the Investment Advisors Act of 1940;
  - (i) A covered adviser; or
  - (j) Such other persons not within the intent of this subsection as the executive director may by rule or order designate;
- (11) "Investment adviser representative" means:
- (a) With respect to any investment adviser registered or required to be registered under this chapter, any partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:
    1. Makes any recommendations or otherwise renders advice regarding securities;
    2. Manages accounts or portfolios of clients;
    3. Determines which recommendation or advice regarding securities should be given;
    4. Solicits, offers, or negotiates for the sale of or sells investment advisory services; or
    5. Supervises employees who perform any of the functions described in this paragraph; and
  - (b) With respect to any covered adviser, any person defined as an investment adviser representative who has a place of business located in Kentucky, as those terms are defined in Rule 203A-3 promulgated in accordance with the Investment Advisors Act of 1940.
- (12) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued, and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of an interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of distribution;
- (13) "Nonissuer" means not directly or indirectly for the benefit of the issuer;
- (14) "Person" means an individual, a limited liability company, a corporation, a partnership, a limited partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

- (15) "Rule" or "regulation" means either or both administrative rules or administrative regulations promulgated by any governmental or other regulatory or self-regulatory entity, as the context requires;
- (16) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer, of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;
- (17) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after January 1, 1961;
- (18) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, viatical settlement investment, voting-trust certificate, certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest in or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period;
- (19) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico;
- (20) "Viatical settlement investment" means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical settlement investment" does not include:
  - (a) Any transaction between a viator and a viatical settlement provider as defined by KRS 304.15-020 and 304.15-700 to 304.15-720;
  - (b) Any transfer of ownership or beneficial interest in a life insurance policy from a viatical settlement provider to another viatical settlement provider as defined by KRS 304.15-020 and 304.15-700 to 304.15-720 or to any legal entity formed solely for the purpose of holding ownership or beneficial interest in a life insurance policy or policies;
  - (c) The bona fide assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or

- (d) The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with Subtitle 15 of KRS Chapter 304; and
- (21) Nothing in this section shall be construed to affect the classification of property for ad valorem tax purposes.

**Effective:** July 12, 2006

**History:** Amended 2006 Ky. Acts ch. 149, sec. 233, effective July 12, 2006. -- Amended 2005 Ky. Acts ch. 58, sec. 2, effective June 20, 2005. -- Amended 2000 Ky. Acts ch. 157, sec. 12, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 20, sec. 1, effective July 15, 1998; and ch. 341, sec. 42. -- Amended 1994 Ky. Acts ch. 165, sec. 2, effective July 15, 1994. -- Amended 1984 Ky. Acts ch. 388, sec. 12, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 346, sec. 1, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 368, sec. 1, effective July 15, 1980. -- Amended 1976 Ky. Acts ch. 12, sec. 2, effective March 1, 1976; and ch. 248, sec. 1, effective March 30, 1976. -- Amended 1972 Ky. Acts ch. 265, sec. 1. -- Amended 1968 Ky. Acts ch. 56, sec. 1. -- Amended 1966 Ky. Acts ch. 255, sec. 238. -- Created 1960 Ky. Acts ch. 110, sec. 9, effective January 1, 1961.

**Legislative Research Commission Note** (6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

**Legislative Research Commission Note** (6/20/2005). Under the authority of KRS 7.136(1)(h), during codification a manifest clerical or typographical error occurring in 2005 Ky. Acts ch. 58, sec. 2(18) has been corrected. It is clear from the context and legislative history of the Act that a comma should appear after the words "viatical settlement investment."